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Civil and Political Rights

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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1310th MEETING

Held at Headquarters, New York,
on Monday, 4 April 1994, at 10 a.m.

Chairman: Mr. ANDO

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Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (CCPR/C/51/Add.8 and HRI/CORE/1/Add.34)

1. At the invitation of the Chairman, Mr. Melendez and Ms. Villalta (El Salvador) took places at the Committee table.

2. The CHAIRMAN said that section I of the list of issues concerned the constitutional and legal framework within which the Covenant was implemented, and the state of emergency. Paragraph (a) sought clarification as to whether any rights guaranteed in the Covenant had not been effectively incorporated in the Constitution of El Salvador, whether the remedy of amparo was available when such rights had been violated. Paragraph (b) referred to paragraph 26 of the second periodic report (CCPR/C/51/Add.8) and inquired about measures taken to ensure non-discrimination on the grounds specified in article 2, paragraph 1, and article 26 of the Covenant. Paragraph (c) requested additional information on the reasons that had led to the lifting of the state of emergency on 12 January 1987 and the ensuing enactment on 11 March 1987 of the "Act concerning the penal procedures applicable in connection with the suspension of constitutional rights". Paragraph (d) called on the reporting State to provide additional information on the purpose and contents of the "repealed Act adopted in 1989" and the compatibility of its provisions with article 4 of the Covenant. Paragraph (e) sought clarification as to whether the special military tribunals referred to in paragraphs 95 and 97 of the report had been abolished as a result of the repeal of the "Act concerning the penal procedures applicable in connection with the suspension of constitutional rights", and the information on whether there were any ordinary military tribunals and, if so, what their competence was. Paragraph (f) requested information on the scope and content of Decree No. 486 (amnesty law), adopted on 20 March 1993, on measures taken to ensure victims of human rights violations the right to an effective remedy under the Covenant and to compensation, and on the extent to which the report of the Commission on the Truth had been taken into account in that regard.

3. Ms. VILLALTA (El Salvador), referring to section I (a) of the list of issues, said that all the civil and political rights guaranteed in the Covenant had been incorporated in her country's Constitution as adopted in 1983 and amended several times subsequently. Salvadorian legislation provided for a number of remedies, including amparo. Under article 247 of the Constitution, any person could seek amparo before the Supreme Court of Justice for a violation of constitutional rights. The right to seek amparo had been further developed under the Constitutional Procedure Act, which provided that any person could have recourse to amparo before the Constitutional Section of the Supreme Court of Justice for a violation of the rights laid down in the Constitution. The Constitutional Section consisted of six judges, including the President of the Supreme Court.

4. For cases involving a violation of the right to freedom, the remedy of habeas corpus or personal appearance could also be invoked. Under article 247 of the Constitution, habeas corpus might be requested before the Constitutional

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(Ms. Villalta, El Salvador)

Section of the Supreme Court of Justice or before the Chambers of Second Instance which were not situated in the capital. In addition, article 11 of the Constitution provided that every person had the right of habeas corpus, whenever any authority or individual illegally restricted his freedom. The remedy of habeas corpus was also provided for under article 38 of the Constitutional Procedure Act.

5. Turning to section 1 (b), she said that article 3 of the Constitution established the principle of equality of all before the law. In the enjoyment of civil rights, no restrictions could be enacted on the basis of differences of nationality, race, sex or religion. Under article 38 of the Constitution, workers must receive equal remuneration for equal work, regardless of sex, race, creed or nationality. Article 47 of the Constitution provided that employers, employees and workers had the right, without distinction as to nationality, sex, race, creed or political beliefs, to associate freely for the protection of their respective interests, by forming professional associations or trade unions. Under article 58 of the Constitution, no educational establishment could refuse to accept students by reason of the marital status of their parents or guardians, or by reason of social, racial or political differences. Salvadorian legislation also established the principle of equality of rights in the family for parents and children.

6. With regard to section I (c), she pointed out that under article 29 of the Constitution, guarantees of the right to enter, remain in and leave the national territory, of the right of every person to express and disseminate his thoughts, and of the right to assemble and meet peacefully could be suspended in the event of war, rebellion, or serious disturbances of the public order. On an exceptional basis, the guarantees embodied in articles 12 and 13 of the Constitution with regard to detention could be suspended. Under a state of emergency, such constitutional guarantees were suspended by the Legislative Assembly or, when that body was not in session, by the executive branch through the Council of Ministers.

7. From 1985 to 1987, certain constitutional guarantees had been suspended through decrees renewed every 30 days. It had been necessary to impose the state of emergency because of the attempts to subvert Salvadorian democracy. Until the constitutional reform in 1991, military tribunals had had jurisdiction in a state of emergency under the Act in question. With the repeal of the "Act concerning the penal procedures", civilians could no longer be brought before military tribunals during a state of emergency. Article 216 of the Constitution restricted the jurisdiction of military tribunals to the judgement and trial of purely military crimes and offences. Accordingly, under a state of emergency, civilians could be tried only by ordinary courts in El Salvador.

8. Referring to section I (d), she said that El Salvador had complied with domestic and international law when it had imposed the state of emergency. Only certain constitutional rights had been suspended, and article 4 of the Covenant had always been followed. Guarantees of basic rights such as the right to life had never been suspended in her country under the state of emergency.

9. Turning to section I (f), she said that Decree No. 486 provided for a broad and unconditional amnesty for persons who had committed offences within the

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(Ms. Villalta, El Salvador)

context of the armed conflict in El Salvador. The amnesty related to both sides in the conflict and was designed to consolidate the peace process in the country and reunite Salvadorian society. The amnesty law broadened the concept of a political offence in El Salvador to cover those directed against the existence of the State, and applied not only to those who had been tried for offences, but also to those who had not. The amnesty law broadened the 1992 national reconciliation act and was unprecedented in the history of El Salvador.

10. El Salvador was encountering problems in compensating the victims of human rights violations. Studies were currently being carried out to determine ways of providing financial compensation. As a result of the 1991 reforms and the Peace Agreement, the Office of the Procurator for the Protection of Human Rights had been established. The Procurator dealt with all human rights violations and sought remedies for them. He was currently working with the Government to compensate as speedily as possible persons who had been victims of the armed conflict. The Commission on the Truth had stressed the need for the Government to set up a special fund to provide compensation to the victims of human rights violations, and the Government was obliged to allocate 1 per cent of all the international assistance that it received to the fund.

11. Mr. AGUILAR emphasized the importance of obtaining information on the factors impeding implementation of the Covenant in El Salvador, including the serious violations of human rights that had taken place during the civil war, and what the real human rights situation in the country was at present. Although the second periodic report (CCPR/C/51/Add.8) explained the various constitutional and legal safeguards for human rights, it ignored the fact that over the past 10 years the most atrocious violations of human rights had been committed, and that the judicial system itself had been found by the Commission on the Truth to be one of the major sources of those violations. He asked what steps had been taken to improve the situation in that respect.

12. Article 2 of the Covenant implied not only that compensation should be paid for serious violations of human rights, but that the full truth concerning such violations should be established. It was therefore discouraging to see how the amnesty law was being implemented, particularly in view of the fact that the Commission on the Truth had called for specific changes in that regard. The representative of El Salvador had just told the Committee that the intent of the amnesty law was to reunite Salvadorian society; it was difficult, however, to believe that it would have that effect, since a majority of the population objected to the way in which the law was being implemented and to the failure to remove some of the high officials who had been most guilty of violations of human rights. Moreover, the amnesty law itself was directly counter to the Covenant; the Covenant prohibited amnesty for such acts as the killing of the six Jesuits, but the law had extended amnesty to those acts. In view of those facts, he asked what the real status of the Covenant was under El Salvador's laws.

13. Although it was stated in the second periodic report that no state of emergency had existed in El Salvador after 1987, the Government had informed the Secretary-General of the imposition of a new state of emergency in 1989. He asked whether any of the rights guaranteed under the Covenant had been suspended during that new state of emergency, and if so, which.

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(Mr. Aguilar)

14. He would also like more information on how article 3 of the Covenant was being implemented with regard to equal status for men and women, as it appeared that women in El Salvador were at a marked disadvantage as compared with men.

15. Mrs. CHANET said that there were unacceptable lacunae in the second periodic report, which did not seem to reflect accurately the reality of the violent civil war which had taken place in El Salvador. There also appeared to be some confusion in the report with regard to what rights were guaranteed under articles 4, 6 and 14 of the Covenant. Moreover, it was not enough merely to refer to the previous report on a number of important aspects of the human rights situation, as the second periodic report did.

16. It would be helpful to have detailed information on the specific place of the Covenant in El Salvador's legislation other than general references to the provisions of the Constitution. She agreed with what Mr. Aguilar had said about the Commission on the Truth and the amnesty law. The amnesty seemed so general that it was in fact absolute and pardoned all those who had committed human rights crimes during the civil war. Although the Commission on the Truth had identified a number of specific violations of the Covenant and made recommendations for remedial actions, including the impeachment of all the officials responsible for the violations and the creation of a supervisory body for the army, as well as compensation for the victims of the crimes committed, the amnesty law in effect seemed intended to block those recommendations, and deprived the victims of any remedy. In that connection, she wondered how the international community could be asked to help ensure compensation for such victims without having the persons responsible for the violations identified.

17. Although the report referred to the ending of the state of emergency, it seemed that a new state of emergency had been declared in 1989. She asked whether the period covered by that second action was regarded as a state of emergency, and if so, what rights guaranteed under the Covenant had been suspended.

18. Referring to article 26 of the Covenant, she asked for an explanation of the apparent discrepancy between the report's statement that no distinction was made between children born in and out of wedlock, and its later reference to rights inherent in the status of children born in wedlock.

19. Mr. PRADO VALLEJO said that there was a great discrepancy between the human rights legislation of El Salvador, which was good, and actual practice in the country. For example, although the right to life was guaranteed by law, thousands of people had been killed or had disappeared over the past decade; although the right to trial was guaranteed, summary executions had taken place. Moreover, the amnesty law now in effect appeared to override not only the rights referred to in paragraph 41 of the second periodic report (CCPR/C/51/Add.8), but the constitutional obligation concerning acts which could not be amnestied. The representative of El Salvador had said that the amnesty law was intended to reunite Salvadorian society, but it seemed unlikely to do so in view of the fact that the country had been the scene of the worst violations of human rights committed in Latin America. Although the Commission on the Truth had established that El Salvador's security forces had committed 95 per cent of the human rights violations, the amnesty law prohibited any action directed against

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(Mr. Prado Vallejo)

those forces and completely pardoned all those who had been responsible for the worst violations, including those responsible for the killing of the six Jesuits.

20. It had been said that, in the interests of national reconciliation, the amnesty law treated all the human rights violations committed during the civil war as political crimes. The fact, however, was that such crimes as murder and torture were common crimes. How could national reconciliation take place under such circumstances? In his view, the amnesty law must be repealed, and he hoped that the new Government of El Salvador would consider repealing it. All the crimes committed during the recent past must be investigated and punished. The military commanders identified as responsible for human rights crimes must not be left in their posts, and the death squads still in existence must be abolished, and the victims of those crimes must be compensated, as the Covenant required. Until those things were done, there could be no democracy or national reconciliation in El Salvador. President Cristiani had sought and achieved agreement with opposition groups, and should continue his efforts in that direction by implementing the recommendations of the Commission on the Truth, including the reform of the judicial system.

21. He inquired whether the remedies of habeas corpus or amparo were available during states of emergency. Paragraph 84 of the report should be clarified, since it appeared to say that the Government could prolong a state of emergency indefinitely by issuing a new decree every 30 days. Turning to article 30 of the Constitution, he requested a definition of "Crimes of international importance".

22. Mr. BRUNI CELLI asked for more information about the value of the Covenant in domestic law, and on whether it could be invoked directly before the courts and had been thus invoked. It would be interesting to learn what laws had been changed since the initial report of El Salvador in order to comply with and recognize the articles of the Covenant not previously covered in its domestic legislation.

23. Concerning the amnesty law, he said that the right to know the truth, even a painful truth, could not be denied. The Commission on the Truth had not sought vengeance, but justice; furthermore, the Government of El Salvador had an international obligation to respect its findings. The Atlacatl Battalion had served as an agent of the State in committing acts of cruelty and murder against Salvadorian citizens, and those acts could not be characterized as acts of war. By punishing the guilty, the Government would bring that difficult era to a close and provide the assurance that such events would never be allowed to recur.

24. He was concerned that the Committee had received little information from non-governmental organizations, and wondered whether the report had been published in El Salvador and whether non-governmental organizations had been informed that it was to be submitted. He asked if the Procurator for the Protection of Human Rights had been consulted regarding its preparation.

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25. Mr. WENNERGREN said that the report was comprehensive and provided much detail, but very little information on developments and progress in the field of human rights since the submission of the initial report. None of the tragic events and difficulties the country had undergone in the recent past were mentioned, and the Commission on the Truth had received only a passing reference.

26. In its report, the Commission on the Truth had expressed serious concerns regarding the administration of justice in El Salvador. He asked for more information on measures being taken to strengthen the administration of justice, which was clearly crucial to the rule of law, the promotion of democracy and the protection of human rights. In its reply to section I (a) of the list of issues, the delegation had stated that all the rights guaranteed under the Covenant had been incorporated in the Constitution. Such incorporation did not appear to be total, however; article 3 of the Constitution provided equality before the law, but difference of political opinion was not among the differences protected. Furthermore, article 6 of the Constitution addressed freedom of expression, but freedom of information was not included. Further comment from the delegation on that subject would be welcome.

27. Mrs. EVATT said that an understanding of the nature of the serious human rights violations which had occurred and why national institutions had failed to provide protection to individuals would be needed in order to establish the dialogue with the delegation of El Salvador. Therefore, she regretted that the report contained no information on the Commission on the Truth or the amnesty law.

28. The reporting State should clarify whether the fund for the compensation of victims recommended by the Commission on the Truth had been established, and if so, who controlled it and whether any victims had actually received compensation. She asked whether the Procurator for the Protection of Human Rights or another official awarded such compensation and what the details of the process were. The judiciary and the army had suffered from the failure of the rule of law, and more information was needed on steps being taken to ensure that they were aware of their responsibilities under the law. She asked whether the Procurator for the Protection of Human Rights could initiate proceedings of any type and whether any of his reports had been published.

29. The section of the report concerning family law (CCPR/C/51/Add.8, paras. 233-240) provided an opportunity for the discussion of the effectiveness of rights. Some inequalities in secondary law existed, but she wondered why the Constitution did not render those laws ineffective and whether they could be challenged before the courts. In view of the inequalities recognized, she inquired whether any new laws had been implemented.

30. Mr. LALLAH said that the amnesty law passed in March 1993 derogated from a number of rights protected by the Covenant, but no mention of that fact had been made in the report. That law removed criminals from the jurisdiction of the courts, thereby diminishing or removing the possibility of individual remedies for violations of human rights. He wondered if the Constitution contained a provision allowing the passage of a law, like the amnesty law, taking away the rights of individuals, and whether its constitutionality could be challenged.

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(Mr. Lallah)

He asked whether the Procurator for the Protection of Human Rights had been given the opportunity to comment on the draft of that legislation.

31. Mr. BAN asked, concerning the relationship of domestic legislation with the Covenant, whether the list of rights included in the Constitution (para. 79 of the report) was exhaustive, as it appeared to him that articles 26 and 27 of the Covenant were not covered. He also requested clarification of paragraph 83. He asked whether the Covenant could be invoked directly before the courts or administrative authorities in individual cases, and if so, how many such cases there had been.

32. The importance of the appointment of the Procurator for the Protection of Human Rights had been emphasized in paragraph 68 of the core document (HRI/CORE/1/Add.34). Despite its independent position, however, that Office was part of the Department of Public Prosecutions, which would appear to limit its ability to act. He wondered whether any other non-governmental organizations or institutions, besides the Office of the Procurator for the Protection of Human Rights, had responsibility for safeguarding human rights. More information on the Government's position on the role of international human rights bodies and their ability to improve the situation would be helpful. More information was also needed on the working methods followed in drawing up the report. He asked whether it had been published before its submission.

33. Mrs. HIGGINS said that, notwithstanding what was stated in paragraph 1 of document CCPR/C/51/Add.8, the report from El Salvador must be regarded as the second periodic report; the document did not fulfil El Salvador's obligation under the Covenant in respect of two reports, and the Committee would therefore expect El Salvador to file its third report in the very near future.

34. The report was detailed, but it was somewhat formalistic and gave little sense of the real problems in the country. In particular, it was surprising that nothing was said in the report about the recommendations of the Commission on the Truth and their relation to the amnesty law.

35. The preconditions for making a reality of the rights enshrined in the Constitution were: freedom of expression; an independent judiciary; the political will to make offenders liable for their actions; and knowledge by citizens of their rights.

36. She invited the representatives of El Salvador to say which of the proposals of the Commission on the Truth El Salvador had accepted and implemented notwithstanding the amnesty law. She had noted what had been said about the possibility of making payments from a compensation fund, but pointed out that the amnesty law would make it difficult to determine entitlements. The existence of the amnesty law, moreover, removed the possibility that those who had actively violated human rights would face punishment. The lack of that punitive element seemed to indicate a lack of the political will that was essential if the entitlements under the Constitution, and under the Covenant, were to become a reality.

37. She asked how far El Salvador had progressed with the plan for purging the army, particularly in the light of the criticisms made by the Secretary-General

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(Mrs. Higgins)

of the United Nations to the effect that the plans that had been announced in that regard were not in keeping with the peace accord.

38. She was also concerned that the lack of judicial reforms jeopardized the entire peace process. There was a widespread feeling, both in the United Nations and among non-governmental organizations, that the Supreme Court had been playing a negative role. As a result of the lack of judicial reform, habeas corpus did not work satisfactorily, even though enshrined in the Constitution, and more specific legislation was required on amparo.

39. Turning to paragraph 86 of the report, she noted that a number of individual constitutional rights could be suspended during a state of emergency. While appreciating that it might be necessary, in extreme circumstances, to restrict the freedom of movement of individuals, she would welcome an explanation from the representatives of El Salvador as to why it could ever be necessary, in any circumstances, to suspend the right of a detainee to be informed in an understandable fashion of his rights, or of the reasons for his detention, and to deprive a detainee of the benefit of legal advice.

40. She understood that the role of the Procurator for the Protection of Human Rights would be even more important after the departure of ONUSAL, and she asked whether the same person would continue in that role and whether he or his successor would be given the resources to ensure effective monitoring of human rights.

41. Finally, she expressed her surprise at the scope of the amnesty law and in particular at the statement made, apparently with pride, by the representative of El Salvador that the concept of a political offence was being broadened. Normally such a thing would be regarded as highly undesirable, and she would welcome an explanation as to why it was regarded in El Salvador as desirable.

42. Mr. POCAR said that the presence of a delegation from El Salvador was all the more welcome as the record of that country in submitting the required periodic reports to the Committee had not been a good one. He recalled that, at the end of 1987, the Committee had sent a letter to the Government of El Salvador asking for information on the assassination of the Chairman of the Salvadorian Human Rights Commission; the information had not yet been received. He hoped that the representatives of El Salvador who were attending the Committee's deliberations would be able to provide information on the assassination and on the measures taken in that connection.

43. He associated himself with the questions already raised by other members of the Committee, drawing particular attention to the amnesty law. Although acknowledging that such laws might be necessary in the interest of national reconciliation, he felt that they should be enacted only if they were an essential precondition for national reconciliation, and that it was important to ensure that human rights did not suffer. Any violation of human rights created a corresponding right to redress on the part of the victims, who were entitled to have the facts examined and, where appropriate, to receive compensation. An amnesty should not give comprehensive immunity from punishment to all those who had violated human rights while leaving the previous system intact and enabling offenders to continue to hold public office, sometimes in the very posts they

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(Mr. Pocar)

had previously occupied. He associated himself with the doubts raised by Mr. Lallah as to whether the amnesty law was constitutional, and he looked forward to the explanations from the Salvadorian delegation on that matter.

44. He noted that the core document submitted by the Government (HRI/CORE/1/Add.34) said nothing about the Salvadorian Human Rights Commission and he asked the delegation whether it still existed.

45. Mr. EL-SHAFEI agreed with other members of the Committee that the report now being considered must be regarded as the second report, and he welcomed the fact that the Government of El Salvador had sent a delegation to introduce it.

46. He pointed out that the report had been drafted in August 1993 but that the delegation, in introducing it, had provided little information on what had happened in the interim. He hoped that the delegation would later provide additional details on the progress of reforms in El Salvador, on the difficulties encountered and on the factors obstructing the implementation of the Covenant in that country.

47. Although the present exercise was unconnected with the efforts of the United Nations in El Salvador to reconcile opposing parties, he felt that the Committee's concern with respect for the Covenant should be seen, not least by the authorities in El Salvador, as a contribution towards those efforts.

48. One of the key problems with which the Committee was concerned was the fact that, instead of heeding the recommendations of the Commission on the Truth, the Salvadorian authorities had immediately opted for a general amnesty law. That was part of a pattern that had also occurred in other countries; he invited the Salvadorian delegation to consult the records of the Committee's deliberations and to note that the consistent position of the Committee had been to oppose amnesty laws which covered up offences.

49. Mr. SADI, while welcoming the presence of representatives of El Salvador, said that it would have been even more useful if the Salvadorian delegation had included representatives from the Ministry of the Interior or from the Ministry of Justice, who would have been in a rather better position to provide comprehensive information to the Committee.

50. With reference to the remedies of habeas corpus and amparo, he asked whether the representatives of El Salvador could provide statistics on the extent to which those rights had been invoked and the degree of success achieved. He also asked how the amnesty law of 1993 would tie up with the obligations under the Geneva Conventions of 1949 and their two Additional Protocols, particularly the second Protocol, relating to the protection of victims of armed conflicts. Noting that the delegation of El Salvador had referred to the question of compensation for the victims of human rights violations, he drew attention to the existence of the United Nations Voluntary Fund for Victims of Torture; the Salvadorian authorities might approach the United Nations concerning the possibility of making use of that Fund.

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51. Mr. HERNDL said that the core document (HRI/CORE/1/Add.34) provided useful information, particularly on the amendments to the Constitution of El Salvador in 1991 and 1992. He welcomed the periodic report, but agreed that to combine the second and third periodic reports due from El Salvador was not an acceptable interpretation of that country's obligations under article 40 of the Covenant.

52. The main problem in respect of human rights in El Salvador was that country's failure to give effect to the recommendations of the Commission on the Truth. The Government had bound itself to accept the Commission's recommendations, and it was therefore most regrettable that, instead of implementing the recommendations, it had set them aside and had passed the amnesty law. He noted that when the constitutionality of the amnesty law had been challenged in the Supreme Court, the Court had ruled that the case was not receivable because it concerned a political matter. That was in spite of the fact that article 183 of the Constitution provided that the Supreme Court had the power to declare laws unconstitutional and that a procedure to that effect might be initiated by any individual.

53. Noting that according to document CCPR/C/14/Add.7, which contained supplementary information to the initial report of El Salvador (CCPR/C/14/Add.5), the provisions of the Covenant could not be invoked directly before the judicial or administrative authorities, he asked how that could be so, given that the Constitution stated that the Covenant was part of the law of the land.

54. Referring to paragraphs 67 to 69 of document HRI/CORE/1/Add.34, he noted that the activities of the Procurator for the Protection of Human Rights included the investigation of complaints concerning cases of human rights violations. He asked what sanctions the Procurator could apply if he found that there had indeed been a violation of human rights.

55. Mr. FRANCIS associated himself with the questions already raised by other members of the Committee. He asked whether the issue of compensation had been considered before the amnesty law had been promulgated; whether the Salvadorian authorities had considered that an amnesty law would constitute a flagrant breach of El Salvador's obligation to punish human rights violations; and whether it was understood that the amnesty law did not relieve the State of its obligation to compensate victims of human rights violations.

56. The CHAIRMAN expressed the hope that the principal concern of the Committee, namely the passing of the amnesty law and the consequent rejection of the recommendations of the Commission on the Truth, was clear to the Salvadorian delegation.

The meeting rose at 1.05 p.m.



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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1311th MEETING

Held at Headquarters, New York,
on Monday, 4 April 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (continued) (CCPR/C/51/Add.8 and HRI/CORE/1/Add.34)

1. At the invitation of the Chairman, Mr. Melendez and Miss Villalta (El Salvador) took places at the Committee table.

2. Mr. MELENDEZ (El Salvador), continuing his responses to the questions put by the Committee under section 1 of the list of issues acknowledged that the report placed disproportionate emphasis on institutional and legal reforms and contained little input from relevant institutions in El Salvador, including the Office of the Procurator for the Protection of Human Rights (para. 57 (d) of the core document). His delegation would recommend that future reports should reflect the views of not only governmental agencies but also non-governmental organizations and the Procurator for the Protection of Human Rights.

3. Moreover it did not answer many of the questions which had been asked following the submission of the first periodic report because of the limited human resources available for human rights matters in the Ministry of Foreign Affairs and the lack of experience of the personnel in question.

4. The principal obstacle to full compliance with the provisions of the Covenant was the situation of armed conflict that had prevailed from 1979 to 1991. The human rights situation had been gradually improving thanks to the monitoring activities of the international community and the measures that had been adopted by the Salvadorian Government, and the improvement had been particularly marked since the signing of the Peace Agreement in 1992.

5. The declining incidence of human rights violations had been accompanied by an opening up of political and ideological spaces in El Salvador. Leftist groups were now permitted to participate in the electoral process on the same footing as other groups and an independent commission had been established to investigate the activities of irregular groups, including the controversial death squads. It had just been announced that the United States Government would grant the commission access to confidential files relating to the activities of such groups.

6. Since taking office in 1989, the Government of President Cristiani had sought to find a political solution to the problems of El Salvador. The amnesty law, which was promulgated in 1993, was designed to put an end to the polarization of Salvadorian society and to promote national reconciliation. El Salvador, however, lacked the resources to successfully complete its transition from conflict to peace. The resources which had been pledged by the international community for a National Reconstruction Plan had not materialized and many of the projects planned had not been implemented. Large numbers of the security forces, for example, had been disbanded on the understanding that

(Mr. Melendez, El Salvador)

the international community would provide resources for the training of a new force, the National Civil Police. The failure to implement that training programme had resulted in a marked increase in the level of delinquency in the country.

7. While dramatic progress could not be expected overnight, the peace process and the trend towards greater protection of human rights in El Salvador were irreversible. Salvadorians would never countenance a return to the conflicts of the 1980s and the Government would maintain its dialogue with the Committee. Despite the shortcomings of the judicial system, the recent changes in the Constitution, particularly the provisions bringing the armed forces under civilian authority, represented a major break with the past.

8. Miss VILLALTA (El Salvador), replying to the question concerning the place of the Covenant within the hierarchy of domestic norms, said that the Constitution took precedence over all other norms. Next came international treaties which had been duly ratified by the competent bodies in El Salvador. They took precedence over secondary laws, such as Codes, Acts and other statutory instruments, and complemented the human rights provisions of the Constitution. Other supplementary sources of law, such as legal precedents, occupied a lower place in the hierarchy.

9. The Office of the Procurator for the Protection of Human Rights was created following the signing of the peace agreement in 1992 and was patterned after the office of ombudsman found in certain other societies. The Office of the Procurator for the Protection of Human Rights, together with those of the Attorney General of the Republic (Fiscalía General) and the Prosecutor-General of the Republic (Procuraduría General), comprised the Department of Public Prosecutions, which was one of the institutions charged with guaranteeing the effective exercise of human rights and fundamental freedoms in El Salvador. Representatives of the Procurator for the Protection of Human Rights visited detainees to investigate allegations of human rights abuses. However, while he was authorized to issue reports and make recommendations, the Procurator had no power to impose penalties. Nevertheless, the establishment of that Office represented a significant strengthening of the machinery for the protection of human rights in El Salvador.

10. On the question of judicial reforms, she reported that the budget allocated to the judicial branch had been increased, permitting computerization of some operations and construction of dormitories for judicial officials, who now worked on a shift system providing access to the judicial system on a 24-hour basis. Thanks to those innovations, it was now possible to prevent violations of the provision that a person should not be detained for longer than 72 hours without being charged. In addition, writs of habeas corpus could now be filed with the Supreme Court. A network of Representatives of the Prisons Inspectorate (paras. 181-183 of the report) had been established in 1989 to monitor the situation of accused persons and the progress made in dealing with their cases. The network was currently operational in four prisons and at a

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(Miss Villalta, El Salvador)

number of police stations. Unfortunately, lack of resources prevented further expansion of its activities. Lack of resources had also stymied efforts to increase the salaries of judges and magistrates with a view to making them more independent and more resistant to corruption. Human rights were now part of the curriculum of all armed forces training courses.

11. On the question of the equality before the law of adopted children and children born out of wedlock, she drew attention to paragraph 243 of the report (CCPR/C/51/Add.8), adding that a new Family Code had been adopted to replace the outdated provisions of the Civil Code and would be implemented in October 1994 when the first batch of family judges was due to complete their training and take their oath of office.

12. On the subject of the remedy of unconstitutionality, she said that the Constitution provided that, in response to a petition lodged by a citizen, the Supreme Court of Justice was competent to declare the unconstitutionality of laws, decrees and regulations, in form and in content, generally and with binding effect.

13. Mr. AGUILAR, referring to a statement made earlier by Mr. Melendez, said that it was for the Committee, not the delegation, to determine the status of the report. The Committee had determined that the report should be considered as the second report of El Salvador, not as a combined second and third report.

14. He also had certain concerns with regard to the right enjoyed by citizens to the remedy of unconstitutionality. In his view, such a right should be enjoyed by all persons in El Salvador and not just citizens of that country, in accordance with the provisions of articles 26 and 27 of the Covenant.

15. Mr. PRADO VALLEJO asked exactly what arrangements had been made to ensure that the new National Civil Police was composed of members without any links with the old security forces, as mandated by the Peace Agreement, in view of the concern expressed in May 1993 by the United Nations Secretary-General over the apparent inclusion of former security police in the new force.

16. Mr. BRUNI CELLI said that he was not satisfied with the answer regarding the amnesty law given earlier by the representative of El Salvador, who had simply said that a political situation had required a political decision, without offering any further explanation. The amnesty law unquestionably denied a number of rights guaranteed under the Covenant and, according to article 144 of the Constitution, in case of conflict between a treaty and a law, the treaty must prevail. The right to ascertain the truth about the violation of basic human rights such as those guaranteed under article 2 of the Constitution, for instance, had been precluded by the amnesty law. El Salvador's ratification of the Covenant - a free and sovereign decision by which it had limited its own sovereignty in the matter of human rights - must override any subsequent political decision.

17. Mr. MELENDEZ (El Salvador) agreed that there were legal contradictions between El Salvador's domestic law and international law. As a general rule, Governments fully recognized the implications of international human rights or other instruments only at times of conflict in their societies. At other times, they gave more emphasis to political considerations.

18. Regarding the composition of the National Civil Police, he did recall that initially the Secretary-General had expressed concern that certain undesirable elements were being integrated into the police force - specifically, there had been a problem with the narcotics police - but as a result of constant contacts and understandings on the matter between the representatives of the Secretary-General and the Salvadorian authorities, there should be full compliance on that point with the Peace Agreement by October 1994.

19. Mr. FRANCIS said that the representatives of El Salvador should provide the Committee with a considered response to the questions raised in the Committee regarding the amnesty law, because that crucial issue could not be glossed over. No country could so comprehensively reject an obligation arising from a treaty.

Right to life, liberty and security of the person and treatment of prisoners and other detainees (articles 6, 7, 9 and 10 of the Covenant) (section II of the list of issues)

20. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of El Salvador, namely: (a) detailed information on measures taken to investigate cases of disappearances, extra-judicial execution, torture and other human rights violations connected with administrative detention, to punish those found guilty and to prevent the recurrence of such acts, and any difficulties encountered; (b) progress achieved in securing control over all detention centres in the country through the establishment of the new Department for Information concerning Detained Persons; (c) frequency with which the death penalty had been imposed and carried out in El Salvador since the consideration of the initial report and the nature of the crimes involved; (d) measures taken by the authorities to ensure the strictest observance of article 7 of the Covenant; (e) any precise rules governing detention by the police established pursuant to the studies referred to in paragraph 151 of the report; (f) any measurable progress as a result of the adoption on 29 May 1991 of a law addressing problems connected with the length of pre-trial detention; (g) extent to which the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and scope of the various problems in the prison system, especially overcrowding of the principal detention centres, as well as steps envisaged to address them; (h) situation of any persons imprisoned during the years of conflict and still being held in detention centres.

21. Miss VILLALTA (El Salvador), referring to sections II (a) and II (f) of the list of issues, said that a series of steps had been taken to avoid a repetition of the occurrences in question. Foremost had been the establishment of the National Civil Police as a professional, apolitical body independent of the armed forces to replace the security forces as the body responsible for public safety and for administrative detentions. Consequently, the police were the ones who must protect the human rights of those under arrest.

(Miss Villalta, El Salvador)

22. Article 13 of the Constitution governed administrative detentions, which could not exceed 72 hours. Another new guarantee had been the establishment of the Department for Information concerning Detained Persons, whose functions were described in paragraphs 146 and 147 of the report. In addition, the Office of the Procurator for the Protection of Human Rights had an obligation to ensure that the basic human rights of detainees were respected and that they were properly treated, and it could initiate court action on behalf of those whose rights had been violated. The network of Representatives of the Prisons Inspectorate also was responsible for preventing prisoners from being subjected to torture or inhuman treatment and ensuring full observance of their human rights.

23. The Office of the Attorney General (Fiscalía General de la Republica) had been expanded to include a section for the investigation of human rights, which dealt with pre-trial detentions. A new department under the Ministry of Justice also monitored treatment of detainees. The Legislative Assembly as well had set up a Commission on Justice and Human Rights (para. 158 of the core document), which could request the President to dismiss the security or intelligence chiefs when clear human rights violations had been found.

24. With regard to section II (b) of the list of issues, the Department for Information concerning Detained Persons had been operating for four years and had been responsible for the progress indicated in paragraphs 149 and 150 of the report and for ensuring that, as a routine procedure, detentions did not exceed the 72-hour limit prescribed by the Constitution. The Department kept a complete computerized record of all prisoners currently in detention, which it communicated to the Office of the Procurator for the Protection of Human Rights, which could then apply to the Constitutional Section of the Supreme Court of Justice for a writ of habeas corpus for any individual. That procedure had in recent years shortened the pre-trial detention periods of prisoners.

25. With regard to section II (c) of the list of issues, in accordance with article 27 of the Constitution, the death penalty could be imposed only for military offences in time of war, and its imposition was regulated by articles 8 to 10 of the Code of Military Justice.

26. As to the strict observance of article 7 of the Covenant (section II (d) of the list of issues), the new departments established in the Judiciary and the Legislature to safeguard human rights had been referred to earlier. The chief responsibility for the treatment of prisoners, however, rested with the Ministry of Justice and its Directorate General for Penal and Rehabilitation Centres (para. 160 of the report). The General Rehabilitation Act was the basic legislation governing prison conditions, article 5 of which excluded the use of torture or inhuman procedures and provided that any prison personnel engaging in such acts should be disciplined; article 58 further provided that disciplinary measures used against prisoners must not affect their health or dignity, and article 70 prohibited the use of violence and verbal or physical abuse of prisoners.

(Miss Villalta, El Salvador)

27. Concerning section II (e) of the list of issues, in addition to the specific rules governing detention set out in articles 12 and 13 of the Constitution and the rights guaranteed detainees under articles 143 and 137 of the Code of Penal Procedure, the recent revision of article 46 of the Code specified all rights of accused persons being held in any type of penal centre. Moreover, the Judiciary had agreements with several universities by which prospective graduates of their faculties of law served as pro bono defence counsel for defendants who could not afford legal costs.

28. With regard to section II (g), measures for the rehabilitation of prisoners were being taken by the judiciary, the Ministry of Justice, the Office of the Attorney General and the Office of the Procurator for the Protection of Human Rights. Reference had already been made to the Office of the Judge Advocate, and to the computerized list of prisoners. Prison overcrowding had been eased by implementation of the emergency act to deal with the problem of unconvicted detainees (paras. 176-179 of the report).

29. In El Salvador there were three central penitentiaries and 11 detention centres. One of the latter was specifically for women and another for minors; all the others were for men, who were classified into different groups such as homosexuals, drug addicts, members of the armed forces, and highly and dangerous criminals. The Ministry of Justice was responsible for all the penitentiary centres; it also administered two hospital blocks, one in a psychiatric hospital and another in a general hospital.

30. El Salvador's budget for the prison sector was very small; for 1993, the budget for some 6,000 prisoners had been about \$3,420,620; from that budget, the daily food allowance per head had been the equivalent of 40 cents a day for men and 57 cents a day for women and children. In the medical branch there were 33 doctors, 6 dentists, 23 psychologists and 1 psychiatrist. Her Government recognized the need for trained prison staff, who should also be aware of human rights issues; there was a prison staff training school but it needed to be expanded. El Salvador also needed more penitentiary centres so as to alleviate overcrowding. The women's penitentiary at Ilopango had been severely damaged by an earthquake in 1986 and as a result many women were being placed elsewhere and were not able to benefit from the special programmes provided for women prisoners, many of whom had young children. At the Tonacatepeque Juvenile Reeducation Centre there were various programmes for the rehabilitation of juvenile delinquents.

31. At the detention centres for men there were many problems because some of the prisoners were drug addicts or suffered from AIDS or other diseases and others were highly dangerous. Recently there had been mutinies in the Morazan prison for the most dangerous criminals. Measures were being taken to rehabilitate criminals; occupational training was provided as well as special treatment for the mentally ill and drug addicts; however, all the programmes were hampered by the problems of overcrowding. Her Government's budget was very small; international assistance would be welcome to alleviate the problems of prisoners, establish new centres and repair the serious damage to the women's centre.

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(Miss Villalta, El Salvador)

32. On section II (h), she said that persons who had been deprived of their liberty as a result of the armed confrontations were no longer in detention centres because they had benefited from the amnesty law of 1993; thus there were no longer any political prisoners in El Salvador's prisons.

33. Mr. AGUILAR said that the representatives of El Salvador had provided very little information about the actual situation in El Salvador and had added very little to the information provided in the report. The second periodic report covered a 10-year period, but many questions had been left unanswered.

34. The report gave very cursory treatment to the implementation of article 6 of the Covenant and made no reference to murders, disappearances and extrajudicial executions. The Committee needed to know what had happened, and who had been involved, whether the Government, paramilitary groups, or the FMLN. In particular, information was needed about the death squads, whose victims numbered in the tens of thousands. He wondered how effective the new commission established to investigate the activities of the death squads would prove, particularly under the amnesty law, it would not be able to carry out all types of investigations. A number of recent incidents seemed to suggest that illegal activities by such groups were still taking place. He had information that the human rights situation had deteriorated greatly since the signing of the peace agreement and that certain murders were being attributed to irregular groups similar to the death squads. Unless the truth were established, and the guilty punished, especially in cases where individuals had taken advantage of their positions as police officers or members of the armed forces, they would think that they could act with impunity in perpetrating torture and death.

35. The same considerations applied to the information provided on article 7 of the Covenant. He asked whether El Salvador had merely signed, or had also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and whether the Convention had become part of the law of the nation; and what measures were being taken to investigate reports of torture, to re-educate members of the security and armed forces, and to change the methods used by the armed forces.

36. The representatives of El Salvador had said nothing about the application of article 9 of the Covenant during all the years of war. One of the great problems of Salvadorian legislation during the reporting period had been that cases of lengthy detention had been permitted. Long periods of detention during which detainees were not able to contact their families or lawyers could amount to a legalization of disappearances. For example, Decree No. 582 of December 1980 allowed detention for more than six months without notification. The information provided in paragraphs 146 onwards was contradictory. He asked whether the police were restricted in providing information to the Department for Information Concerning Detained Persons and whether members of the Department were able to visit army barracks which was one place where prisoners might be held.

37. Round-ups of criminals had often been used as a means of detaining political opponents and recruiting soldiers for the army; he asked whether such round-ups still took place and what the situation had been during the war years.

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(Mr. Aguilar)

He was surprised that only four paragraphs (paras. 171 to 175) were devoted to political crimes and that nothing was said about the application of article 10 during the 12 years of war.

38. Mrs. HIGGINS recalled that the Peace Agreement had called for a sifting out of human rights violators from the armed forces and the replacing of three units of the security forces by a national force. It appeared, however, that the issue of paramilitary personnel had not been addressed and quite a few of them had entered the new civilian police force. She asked what was being done to screen out undesirable elements from the police force.

39. On the subject of death squads, it was her understanding that the commission established to investigate the activities of death squads had the authority to investigate politically motivated offences which had taken place after 1992. Accordingly, the onus was still on the Government of El Salvador to look into the activities of death squads prior to that date. It was her impression that the Government was still not investigating the killings with any great vigour. She asked how the problem of unravelling the truth was being addressed in respect of the death squads.

40. She asked whether reports that the information on the register of the Department for Information concerning detained persons had not been made available to the Procurator for the Protection of Human Rights, were true and, if so, why that information was being withheld. Finally, she asked why there were separate prisons for homosexuals and for members of the armed forces.

41. Mr. LALLAH said that El Salvador's perspective on article 6 was not really appropriate for a country with so many missing and dead persons; some information needed to be provided and, at the very least, approximate figures on the numbers of people concerned.

42. The representative of El Salvador had said that the death penalty had been abolished for civilian offences; however, paragraphs 102 and 122 of the report referred to the imposition of the death penalty for certain civilian offences, and paragraph 122 referred to commutations of death penalties up to 31 May 1992. He therefore asked when the death penalty had been abolished for civilian offences, and pointed out that although section II (c) of the list of issues requested very specific information, none had been provided.

43. Mr. BRUNI CELLI, noting, with respect to article 7 of the Covenant, that article 27 of the Constitution of El Salvador prohibited inter alia life imprisonment and any form of torture, said that there was a vast difference between intention and actual practice. Since El Salvador was just emerging from 10 years of war and violence, he wished to know whether cases of torture had been reported, whether the victims of such torture had been guaranteed the rights provided for under article 13 of the Covenant and what action had been taken to investigate, deal with such cases and prevent their recurrence. Any information on specific programmes designed to educate the armed forces and police regarding the need to refrain from the use of torture and other cruel practices would also be welcome.

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44. Mr. BAN asked how many death sentences had been executed over the last couple of years. With respect to paragraph 127 of the report, while prison staff were liable to sanctions for offences relating to torture, the report was silent on legislation concerning torture committed by the police and military personnel. He wondered whether they were subject to the same legislation as prison officials and whether the latter were subject to military or civil law. While the establishment of the Department for Information concerning Detained Persons had probably been in response to the State's concerns over the massive violations of human rights during the 10 years of war and turbulence, he wondered whether pouring money and manpower into that Department, the Prisons Inspectorate and the Office of the Judge Advocate was a wise investment.

45. Mr. PRADO VALLEJO said that while the Department for Information concerning Detained Persons was a very good initiative, the procedures for administrative detention were still too broad. Moreover, laws were not being adequately applied. According to the Committee on Human Rights of El Salvador, there had been 256 extrajudicial executions in 1992 and 308 in 1993; the ONUSAL report for the period May to July 1993 had indicated a 30 per cent increase in violence. Most cases of violence and extrajudicial executions had been attributed to the national police and armed forces. In that connection, he wondered whether the reports of executions and violence had been investigated, and whether any systems or safeguards were being established to address the problem.

46. Mrs. CHANET asked whether the military regulation requiring subordinate officers to obey, at all times, the orders from their superiors, had been abolished as recommended by the Commission on Truth.

47. Mrs. EVATT, referring to paragraph 170 (f) of the report, asked why homosexual prisoners had to be subjected to treatment to modify their behaviour and wondered whether such a practice would not be considered discriminatory and incompatible with their freedom of choice of sexual identity.

48. Mr. MELENDEZ (El Salvador) said that as many of the Committee's additional questions with respect to section II had political overtones and were sensitive, he would prefer to consult with his country's authorities and respond to them the following day.

49. It was so decided.

Non-discrimination and equality of the sexes, freedom of opinion and expression, right to participate in the conduct of public affairs, and rights of persons belonging to minorities (articles 3, 18, 19, 25 and 27 of the Covenant) (section IV of the list of issues)

50. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of El Salvador, namely: (a) clarification of the measures that had been taken and the results achieved, to remove or reduce the remaining inequalities between men and women; (b) additional information on the relevant regulations and procedures under which censorship was exercised; (c) factors or difficulties hampering the implementation and enjoyment of the rights under article 27 of the Covenant; and (d) indigenous or other minority groups, if any, represented in the Legislative Assembly, local councils, national institutions and the Salvadorian administration.

51. Ms. VILLALTA (El Salvador) said, with respect to section IV (a), that many measures had been introduced to reduce the remaining inequalities between men and women. Women had the same right to form professional associations and trade unions as men and were even entitled to labour benefits that were not available to men; they were exempted, for instance, from working in dangerous conditions and enjoyed reduced working hours. Legal inequalities between spouses had been abolished in 1950 and, under the current legislation, women could keep their maiden name. Women also occupied a number of senior professional positions in the Government, universities and the judiciary. Concerning section IV (b), under article 6 of the Constitution, public entertainment was subject to censorship. A body on public entertainment on radio and television had been established to censor such things as pornographic films. Latin America was still relatively conservative compared to some other cultures, and movies were classified for different age groups. Articles 211 and 212 of the penal code dealt with offences against public morals, especially obscene exhibitions, pornography and prostitution.

The meeting rose at 6.05 p.m.



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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1312th MEETING

Held at Headquarters, New York,
on Tuesday, 5 April 1994, at 10 a.m.

Chairman: Mr. ANDO

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Covenant (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (continued) (CCPR/C/51/Add.8)

1. At the invitation of the Chairman, Mr. Melendez and Ms. Villalta (El Salvador) took places at the Committee table.

Right to life, liberty and security of the person and treatment of prisoners and other detainees (arts. 6, 7, 9 and 10 of the Covenant) (sect. II of the list of issues) (continued)

2. Mr. MELENDEZ (El Salvador), replying to earlier questions, said that the process of dismissing from the armed forces all officers who had been implicated in human rights offences had now been virtually completed in accordance with the Peace Agreement.

3. The question had also been raised as to what would happen when ONUSAL left El Salvador and, in particular, how the observance of human rights would be monitored in the future. It was anticipated that ONUSAL would continue its work in some form after the elections, and would therefore be involved to some extent in human rights monitoring. However, the Government had also given undertakings in that regard in the context of the Mexico Agreements. The Procurator for the Protection of Human Rights would be largely responsible for monitoring human rights, together with the Salvadorian Human Rights Commission and an independent expert.

4. On the question of assassinations, the disappearance of individuals and the operation of the death squads, he said that, during the 12 years of the war that had now ended, much that went on in the country had been largely outside the control of the State. However, the Mexico Agreements had established mechanisms, including the Commission on the Truth, for investigating incidents arising from the armed conflict and for determining where the responsibility lay. The Commission's mandate had been to investigate serious violations of human rights from 1980 onwards, committed both by the armed forces and by the insurgents. The Commission itself had admitted that cases were too numerous for them all to be investigated and the Government of El Salvador shared that view. The Commission had identified a number of cases of particular gravity which had implications of international, rather than purely national, significance and the Government considered that, as a matter of practicality, it should concentrate on those cases.

5. With regard to the punishment of those assumed to be responsible, the Commission on the Truth had recognized that no investigation as to responsibility had been possible while the armed conflict continued, and that to punish those guilty of all the crimes committed during the war would not promote the process of reconciliation but, on the contrary, would be likely further to polarize Salvadorian society and therefore to be counterproductive. The Government agreed with that point of view. It should be appreciated that El Salvador was now in a transitional period that was in many ways as difficult as the period of armed conflict.

(Mr. Melendez, El Salvador)

6. The changes that had been made in the armed forces had been both quantitative and qualitative in nature. In the first place, the armed forces had been reduced by over 50 per cent. Secondly, they now accepted their subordination to the civilian authority and fulfilled their constitutional duties, in particular the defence of national sovereignty. Thirdly, the special battalions which had committed numerous human rights abuses had been dissolved. Those measures would radically alter the old structures, which had created internal security threats. The new National Civilian Police would assume its due role in ensuring public security within the country.

7. As for illegal groups, the Commission set up within El Salvador was currently investigating their past activities, as recommended by the Commission on the Truth, but it was as yet too early to say whether or not it would be possible to apply all the recommendations made by the latter Commission.

8. Thus, the process that had begun with the Peace Agreement was still continuing and many of the undertakings made in that context were being honoured. The process of compliance was a continuing one.

9. With respect to the administration of justice, which had been much criticized, he said that in June 1994, after the elections, all the judicial authorities would change and at that time the recommendations that had been made on that subject would be put into practice.

10. The Commission on the Truth, the Special Rapporteur of the Commission on Human Rights and the independent expert had all come to the conclusion that the death squads that had operated in El Salvador had been set up, financed and operated by civilians and not by the Government. They were, in fact, the product of a polarized society at war with itself, and had operated outside the control of the organs of the State. It was therefore incorrect to state, as Amnesty International had done that the death squads were the agents of government policy.

11. A question had been asked regarding the status in El Salvador of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. El Salvador was not a party to that Convention; its international obligations in that regard came under the inter-American system. It was currently studying the United Nations Convention with a view to possibly becoming a party to it.

12. On the question of political opponents of the Government, he said that freedom of expression was fully respected in El Salvador, and political opponents were no longer detained. Participation in society by the political left was fully guaranteed. Moreover, no detainees of any kind were held by the military; that was the responsibility of the Civilian Police, whose members were now chosen through a rigorous selection procedure in which ONUSAL was assisting and which ensured that no member of the security forces had been involved in abuses of human rights in the past.

13. Ms. VILLALTA (El Salvador), replying to questions concerning legal issues, said that the crimes regarded as being of international importance were defined in the Salvadorian Criminal Code as including genocide, public incitement to

(Ms. Villalta, El Salvador)

war of aggression, offences against the laws and customs of war, crimes against humanity, piracy, the slave trade and the trade in women and children.

14. The penalties imposed where a prisoner was kept in custody for longer than was permitted by law were also regulated in the Criminal Code, article 221 of which specified that deprivation of freedom for an illegal period was punishable. It was the duty of the Procurator for the Protection of Human Rights to ensure that the time-limits for the detention of persons were strictly respected.

15. Another question concerned the new office set up by the Supreme Court of Justice, namely the Department of Detained Persons. It produced lists of all arrests made in El Salvador, which were recorded in a publicly available document.

16. The death penalty for civilians had been abolished since December 1993, when the present Constitution entered into force. Article 27 of the Constitution imposed the death penalty only for military crimes under military laws or for high treason under the Military Code of Justice. The death penalty had been abolished for civilians because it was not considered to be a deterrent to criminals and because, if it were imposed, possible miscarriages of justice could not later be corrected. There was an inadvertent error in the report submitted by El Salvador: a table in paragraph 122 appeared to be referring to the death penalty but was in fact referring to commuted sentences.

17. In reply to the question why different categories of offenders were kept separate in Salvadorian prisons, she explained that it was undesirable to put all accused or condemned persons together because some detainees, in particular those who had been arrested for non-violent crimes, might be at risk from violent criminals. For example, it was desirable to keep those who had been arrested for traffic offences separate from those accused of crimes of violence such as murder. Such separation was necessary to prevent prison uprisings, of which there had been two instances recently in which a number of prisoners had been killed.

18. Mr. BRUNI CELLI asked about the statement by Mr. Melendez that the armed forces now accepted that they were subordinate to the civilian authorities. He wondered whether that meant that previously, that had not been the case. That would create a very serious problem, with a civilian Head of State recognized by the international community and a parallel military power that did not recognize any allegiance to the Head of State.

19. That situation had to be seen in the context of another statement that had been made, namely that the death squads were civilian and were beyond the control of the Government. The two statements, taken together, raised in a new light the entire problem of responsibility for the atrocities that had been committed.

20. Unless more details were provided there was a risk that the Committee would ultimately be unable to determine where the ultimate responsibility lay and he asked Mr. Melendez to provide further information.

21. Mr. LALLAH said that it seemed that there was confusion concerning paragraph 122 of the report. Notwithstanding the statement that the death penalty had been abolished, he wondered whether it was still the case that military personnel were subject to the death penalty in time of war, either civil or with a foreign Power, and if that were the case how many times the penalty had been applied.

22. Mr. AGUILAR noted that under army regulations soldiers were obliged to obey the orders of a superior under any circumstances, in accordance with the concept of "due obedience". The circumstances seemed to extend to human rights violations and to breaches of the Constitution, a situation which was clearly at variance with international practice. He wished to know whether the relevant regulations were still in force.

23. Mr. MELENDEZ (El Salvador) said that for much of the twentieth century the society and Government of El Salvador had been dominated by the military, a situation which had begun to change with the protests of 1979, which had culminated in the peace process. Since that change the military had been subordinated to civilian authority, and the regulations referred to by Mr. Aguilar had been amended. With regard to the death squads, he drew the Committee's attention to the comments of the Commission on the Truth, which had dealt with the matter in some detail. The answer to the question of whether the death squads had links to other elements in El Salvador depended upon what ideological stance was taken. The Committee would appreciate that it was not uncommon in Latin American societies for certain elements to escape government control. There was, however, no doubt that Salvadorian society had made much progress, with the involvement of every sector, since the end of the war. With reference to paragraph 122, he reiterated that the statistics did not relate to the death penalty. The statistical table had been presented erroneously.

24. Ms. VILLALTA (El Salvador) said that the only circumstance in which the death penalty could be applied was in the event of international war, as provided for under article 27 of the Constitution. Under the Penal Code the defence of obeying a superior could not be advanced where an act was punishable.

25. Mrs. CHANET said that the real issue with respect to the obeying of orders by subordinates was whether article 173 of the army regulations had been repealed, as called for by the Commission on the Truth.

26. Mr. MELENDEZ (El Salvador) said that it was his understanding that the relevant regulations had been amended. He would provide the Committee with exact information at a later stage.

27. The CHAIRMAN said that the delegation of El Salvador would proceed to answer questions held over from section IV of the list of issues.

28. Ms. VILLALTA (El Salvador) said that, as a result of assimilation, there were few members of indigenous minorities in the country. The rights of indigenous groups were, however, fully protected under the Constitution, and positive efforts were made to promote indigenous culture and the use of indigenous languages. Appropriate organizations had been established to that end. Indigenous groups were represented in the Parliament and Administration;

(Ms. Villalta, El Salvador)

all Salvadorian citizens enjoyed the right to vote and to elect the candidate of their choice and to seek political office, and those rights were fully protected under various articles of the Constitution.

Right to a fair trial (art. 14 of the Covenant) (sect. III of the list of issues)

29. The CHAIRMAN read out section III of the list of issues to be taken up in connection with the second periodic report of El Salvador, namely:

(a) clarification of the respective roles, in responding to human rights violations, of regular courts, the Presidential Commissioner for Human Rights, the Procurator for the Protection of Human Rights and the various human rights bodies set up by the Supreme Court of Justice, the Legislative Assembly and the armed forces in responding to human rights violations; (b) an indication of whether confessions or testimony obtained under duress could be used in court proceedings; (c) detailed information on the application in practice of the legal provisions relating to political crimes, on the safeguards and effective remedies available to persons suspected of having committed such crimes and on the number of political prisoners; (d) information on the organization and functioning of the Bar in El Salvador; and (e) information on measures taken to address the problems resulting from the backlog in the judiciary and on whether the adoption of Decision No. 434 had led to any progress.

30. Ms. VILLALTA (El Salvador), commenting on paragraph III (a) of the list of issues, said that the role of the Presidential Commissioner for Human Rights was to monitor human rights and to ensure the effective application of legal remedies in the event of violations. The Office of the Procurator for the Protection of Human Rights had similar responsibilities, including with respect to administrative decisions. Both organs had been established under the peace process.

31. The primordial role in the judicial protection of human rights lay with the Constitutional Division of the Supreme Court of Justice, particularly with regard to actions for amparo and habeas corpus in the event of violation of constitutional rights. The Criminal Division organized training for judges to familiarize them with human rights provisions, in particular the commitments entered into by El Salvador under international instruments, which took precedence over secondary domestic legislation. The Legislative Assembly had established a Justice and Human Rights Commission with far-reaching powers, including, in accordance with article 131 of the Constitution, that of recommending dismissal of the Chiefs of Security and Intelligence in the event of human rights violations. Also in connection with paragraph III (a), training programmes on the protection of human rights had been introduced at all levels of the armed forces.

32. With respect to paragraph III (b), testimony obtained under duress was not legally valid, and, under article 12 of the Constitution, those responsible for eliciting such testimony were liable to criminal sanctions.

33. The concept of political crime and the classification of crimes recognized as such were to be found in article 151 of the Penal Code. Such crimes essentially related to acts intended to overthrow or subvert the institution of the State or threaten the nation or its territorial integrity. The main

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(Ms. Villalta, El Salvador)

safeguard was the constitutional provision for amnesty, granted by the Legislative Assembly, for political crimes or common crimes committed in connection with a political act. Such common crimes would include, for example, wire-tapping in connection with a seditious act. Since the amnesty of March 1993, no political prisoners had been incarcerated in the country.

34. Turning to question III (d), she said that authorization to practise law in El Salvador was granted by the courts to persons who had obtained a degree in law from a university and had demonstrated their proficiency in the subject. Membership in a bar association was not obligatory, although associations of lawyers did exist in the country.

35. Referring to question III (e), she said that progress had in fact been made as a result of the adoption of Decision No. 434. Measures had been taken to provide a larger budget for the judiciary, and more courts had been created, including family courts and a number of itinerant courts to help deal with case overloads. An auditing and monitoring department had also been set up to supervise the allocation of cases to the courts, and the working hours of the courts had been increased. A law had also been passed recently regulating judicial procedures and establishing penalties for the violation of proper procedures.

36. Mr. NDIAYE associated himself with the views expressed on section I by Mr. Aguilar and Mrs. Chanet. In connection with section IV, he asked how the prohibition referred to in paragraph 225 of the second periodic report was in fact applied. Referring to paragraph 239 of the report, he said it seemed to him that the statement that the principle of the equality of children was not fully respected was too severe, as it was difficult to see how preference could fail to be given to legitimate children in cases of intestacy. Similarly, in paragraph 238 of the report, he failed to see how the provisions cited constituted an inequality. In connection with the right to vote, he asked for more information on how the provisions on political rights and duties referred to in paragraphs 265-269 were implemented in practice, and commented that the provisions concerning the financing of elections seemed likely to lead to over-subsidization of the majority party.

37. Mr. HERNDL noted that the second periodic report provided more information on ethnic minorities and the indigenous population than the first report had; he would, however, welcome more specific information on what proportion of the population was made up of indigenous peoples or spoke non-Spanish languages. Protection of the identity of indigenous groups involved more than preserving and respecting indigenous languages; it included positive measures to protect their identity. He hoped that in its next report El Salvador could provide some specific figures with regard to its ethnic minorities.

38. Mr. AGUILAR noted that only two paragraphs of the periodic report were devoted to article 14 of the Covenant; that seemed very little in the light of the criticisms of El Salvador's judicial system made by the Committee. He hoped that more information on the subject would be included in the next report.

39. In connection with article 17 of the Covenant, he asked for more information regarding the prohibition of public performances in private places and on how those terms were defined. The censorship described in paragraph 220

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(Mr. Aguilar)

of the report seemed very far-reaching, as it extended to "the ethical and aesthetic aspects of every artistic work". He asked for more information on what criteria were used for the "evaluation" of such works by the authorities and on what basis the distinction between obscenity and vulgarity was made. He also asked for information on what books, articles and public performances had been prohibited in El Salvador over the last 10 years.

40. In connection with article 19 of the Covenant, he noted that there had been instances of death threats and incitement to violence against certain groups being published in some newspapers or broadcast on television, and asked whether article 406 of the Penal Code had been applied to any such cases and whether anyone had been brought to trial or punished for such acts.

41. Referring to paragraph 237 of the report, he said that the situation referred to seemed to him a clear case of inequality. The same was true with regard to the different criteria for divorce established for men and women, as reported in paragraph 238.

42. Mrs. HIGGINS asked for further clarification of the concept of "political crime" embodied in Salvadorian legislation. In particular, she wondered why such a special category of crimes was needed, and why some actions such as "advocating anarchy" had been included in it. It seemed that actions might have been included in the list in order to make it possible to extend amnesty to them; it was unclear, however, how such classification affected the availability of such normal recourses as amparo and habeas corpus or the question of extraditability, in particular with respect to the crime of terrorism. She would also like more information with regard to the significance of paragraphs 175 (b) and 175 (c) of the report.

43. Mrs. CHANET said that she had some difficulty with the concept of political crimes, and would like to hear more information on the subjective criteria mentioned in paragraph 173 and how the political motivation of an action was established. The parameters of the concept seemed quite broad, extending as far as misappropriation of public funds, which ordinarily would be considered an aggravating circumstance, and should be clarified. If a political motivation was expressed for the misappropriation of funds, for example, under the Amnesty Law the perpetrator could be granted amnesty and guaranteed impunity. The delegation had stated that the regime for political offenders was protective rather than punitive. She found it difficult, however, to reconcile the description of it contained in paragraph 175 with a protective approach.

44. Mrs. EVATT said that lack of confidence in the judiciary appeared to be widespread, largely because it was viewed as being open to political pressure. Reports had been received that judges attempting to perform their duties conscientiously had suffered threats and intimidation. She wondered if the Government was considering taking further action to distance the judiciary from politics. For example, the Supreme Court had power to rule on constitutional questions, but it also appeared to be deeply involved in the electoral process. The judges who were members of the Supreme Electoral Tribunal represented political parties, according to paragraph 276 of the report. She joined Mr. Aguilar in requesting more information on article 14 of the Covenant.

(Mrs. Evatt)

45. With regard to the right of privacy, she would be interested to learn who had authority to order searches and seizures, how they were conducted and whether individuals had any recourse or could challenge such orders. She also wondered whether any protections for trade union officials existed and why directors of unions must be Salvadorian by birth. The numbers of members required to form a political party, mentioned in paragraph 272, seemed excessive. She also inquired whether an individual who was not a member of a registered political party could stand for election.

46. Mr. POGAR associated himself with previous questions on the judicial system, and asked whether the bill on extrajudicial confessions which the Government had submitted to the Legislative Assembly had been approved, and if so, what measures had been taken in that area.

47. Regarding article 18 of the Covenant guaranteeing freedom of religion, the legal personality of churches was established in article 26 of the Constitution, and the Roman Catholic Church was recognized. He would welcome more information on the conditions under law for the recognition of the legal personality of other religious groups. More information was also needed on conscientious objection to military service. He understood that it was not recognized in El Salvador. With reference to the Committee's general comment on article 18, he wondered if the reform of the military included any initiatives to change that stance. Regarding freedom of association, article 47 of the Constitution limited the right to form trade associations to private and independent enterprises, but he would be interested to know the reasons for limiting that right for public workers. Concerning the electoral process, the Special Rapporteur of the Commission on Human Rights had reported that refugees and displaced persons had faced problems in receiving personal identity certificates, and he wondered whether those difficulties had been overcome before the election.

48. Mr. WENNERGREN said that he would like to learn more about the administrative jurisdiction remedies mentioned in paragraph 53. He wondered what type of cases they dealt with and how many were considered per year.

49. He asked whether the itinerant courts set up to assist with the backlog of cases were also ordinary courts which were a constituent part of the judiciary system, or whether they were ad hoc courts established as needed. If the latter was true, he saw a difficulty in that they could not be considered fully independent. It should also be clarified whether the itinerant courts were single-judge courts, like the courts of first instance.

50. Mr. BAN said that he associated himself with the concerns expressed by Mr. Aguilar and Mr. Ndiaye on the censorship of public performances, and that he was unable to understand why prior censorship was needed, when serious penalties were available to the authorities to sanction such offences. He had found little information in the report on the system for operating radio and television stations, and was eager to know more about licensing requirements and whether private individuals or enterprises could establish and operate stations. He wondered whether newspapers and periodicals from neighbouring Spanish-speaking countries could be imported into El Salvador and whether radio and television broadcasts from other countries were controlled.

51. Mr. DIMITRIJEVIC said that he remained puzzled by the discussion of political crime. He had the impression that it was the elaboration of an idea, prevalent in Europe during the nineteenth century, that offenders who had been motivated by their beliefs should be treated with some respect. The examples given were confusing, however, since amnesty and pardon were not remedies under the Covenant. He asked for further clarification of the differences in the prison regime for political and other offenders in El Salvador.

52. More information on the position of non-governmental organizations and whether they could institute proceedings actio popularis or amicus curiae would be helpful.

53. Regarding freedom of expression and conscience, it was important to know whether blasphemy was still a criminal offence. With regard to article 19 of the Covenant and the active right to know which it guaranteed, he wondered if citizens had access to files concerning the events of the recent past.

54. Turning to freedom of association, he noted the statement in paragraph 225 of the report that armed groups of a political, religious or corporate character were not permitted, and wondered if certain associations were listed in police or other registries as subversive, and whether the treatment of an individual arrested would be affected by membership in such a group.

The meeting rose at 1 p.m.



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HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1313th MEETING

Held at Headquarters, New York,
on Tuesday, 5 April 1994, at 3 p.m.

Chairman: Mr. ANDO

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after the end of the session.

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of El Salvador (continued) (CCPR/C/51/Add.8)

1. At the invitation of the Chairman, Mr. Meléndez and Ms. Villalta (El Salvador) took places at the Committee table.

2. The CHAIRMAN said that the delegation of El Salvador would proceed to answer questions held over from sections III and IV of the list of issues.

3. Mr. MELENDEZ (El Salvador) said that censorship could, indeed, potentially violate individual freedoms, in particular freedom of expression. The old laws of El Salvador, which had not undergone major changes, had been enacted in the early 1950s to combat anarchic doctrines aimed at undermining the State's security. Currently, especially since the signing of the peace agreements, the main thrust of censorship was to try to maintain a certain public moral standard. Thus, as in many other countries, including developed countries, public performances, particularly cinematographic films and videotapes shown on television or in cinemas, and radio broadcasts were evaluated to ensure that minors were not exposed to scenes of excessive violence, obscenity or vulgarity.

4. With regard to freedom of association, while it was permitted in respect of private and autonomous institutions, there were some restrictions in respect of public institutions, although they were not spelled out in the current legislation. The reason for such implicit restrictions was that, when powerful associations such as those of the Ministries of Finance, Public Works or the giant general association of public and municipal employees decided to go on strike, they could virtually paralyse government activities. He was unaware of any political activities carried out by such associations; their main aim was to defend the interests of their members.

5. There were two main institutions for the protection of human rights: the Office of the Presidential Commissioner for Human Rights, which was essentially an advisory and policy-setting body, and the Office of the Procurator for the Protection of Human Rights, a fully independent office with its own budget which was responsible for defending and protecting human rights throughout the country. It replaced the Government Commission on Human Rights.

6. Unlike other countries, El Salvador had few indigenous minorities. However, there was a unit in the Ministry of Education responsible for ensuring the protection and preservation of the culture of the small groups that existed and for furthering their productive activities. There were very few Nahuatl speakers in the country - that language being used mainly to preserve the country's pre-Colombian history - and Spanish was, for all practical purposes, the country's only language.

7. On electoral issues, some funding was provided for electoral campaigning because many small parties could not afford the high costs involved. Any party

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(Mr. Meléndez, El Salvador)

that secured at least 1 per cent of the vote was eligible for financing. As for the right and duty to vote, it was not appropriate to compare conditions in El Salvador, a developing country, with those in industrialized countries. El Salvador did not have the infrastructure to provide all the facilities that could be made available in developed countries. Everything possible was done, however, to ensure that electoral districts were established where the voters were.

8. It would be helpful, when discussing political crimes, to look back to the earlier period when the question of the political and ideological confrontation between socialism and communism had been the principal concern in certain sectors of the country. Following the signing of the peace agreements, that attitude had undergone a considerable change. As for the operation of non-governmental organizations, the activities of international non-governmental organizations were regulated by an agreement between the Government of El Salvador and the organization concerned which was ratified by the Legislative Assembly. Such organizations must operate in compliance with domestic laws. National non-governmental organizations must establish a legal personality through the Ministry of the Interior and also comply with the law.

9. On the issue of electoral irregularities, he noted that the political observers, the United Nations and the Salvadorian political parties themselves had commended the electoral process as a whole, although they had drawn attention to some inefficiency on the part of the Electoral Tribunal of El Salvador. The former head of the United Nations Mission in El Salvador (ONUSAL) had noted that the country had sound political institutions and that the political forces had decided to play by the rules; it was, indeed, important that leftist and rightist political groups could work together towards the common objective of consolidating peace. He had, however, expressed regret, in connection with the peace agreements signed at Chapultepec, that barely 10 per cent of the programme to allocate land to ex-combatants and peasants in the conflict areas had been completed.

10. Much therefore remained to be done. The old police force was still being allowed to operate in order to bridge the gap between its phasing out and the deployment of the new national police force of nearly 5,700 members on the completion of its training, pursuant to the peace agreements. There was also legislation to strengthen the judiciary and decentralize the Supreme Court of Justice awaiting approval by the Legislative Assembly. The new government authorities would set up the new Supreme Court in June 1995. The success of the programme to allocate lands would depend on the resources available and their timing. His Government was fully committed to consolidating peace, promoting democracy and protecting human rights.

11. Ms. VILLALTA (El Salvador), replying to a question concerning the acquisition of legal personality by churches other than the Roman Catholic Church under article 26 of the Constitution, said that such churches could submit their statutes to the Ministry of the Interior which could then grant them legal status. The Family Code to be implemented in October 1994 would, inter alia, change the old Roman code of paterfamilias, whereby the domicile, nationality and name of the father were imposed on the family group, and remove

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the inequalities between men and women as far as the crime of adultery was concerned.

12. With regard to the structure of the judicial system, she noted that it was composed of four tiers: the magistrates, who conducted initial investigations into a case and dealt with minor offences; the courts of first instance, which handled civil and criminal cases; the courts of second instance, which considered appeals resulting from judgements handed down by the courts of first instance; and the Supreme Court of Justice, which was currently composed of 14 judges, its President being also the President of the entire judiciary. The Supreme Court of Justice was divided into four chambers dealing with constitutional, civil and criminal matters and administrative disputes. Following the signing of the peace agreements, two new Acts had been adopted, the Career Judicial Service Act and the National Council of the Judiciary Act. A national law school had been established; all lawyers aspiring to be judges had to attend that school; and practising judges had to attend seminars there. The National Council of the Judiciary appointed judges and alternate judges to the courts of second instance, through a panel of three lawyers and proposed half of the 84 candidates for the 14 posts on the Supreme Court of Justice, the other 42 being proposed by the Bar Association.

13. As for the security of judges in the performance of their duties, the judiciary had signed an agreement with the police to protect them from the threats and intimidation to which they had been subjected especially from the associates of convicted drug traffickers.

14. The itinerant courts were mobile courts each composed of a judge of first instance rank, as its head, a clerk of the court and two assistants. Their function was to provide technical and legal support to judges of courts which had a very heavy backlog of criminal cases.

15. With regard to administrative disputes, under the Administrative Jurisdiction Remedies Act, adopted in 1978, civil servants with grievances against the public administration could bring them before the Administrative Disputes Section of the Supreme Court.

16. Mr. PRADO VALLEJO said that, while the human rights situation in El Salvador had improved, that country was still facing serious problems particularly as a result of the activities of the security forces, which continued to violate the basic rights and freedoms of Salvadorians thus disrupting society and jeopardizing the peace agreements which the President and the international community had helped to bring about. In that connection, the recommendations of the Commission on the Truth, which had the solid backing of the international community, must be fully implemented. Moreover, the amnesty law adversely affected the protection of rights guaranteed under the Covenant and must be either revoked or reviewed to allow investigations to be conducted and the perpetrators of human rights violations to be punished, otherwise there could be no real peace in the country. The victims of such violations must receive compensation and the death squads which were still in operation must be dismantled. The police force, which should be reformed in such a way as to ensure that members of other disbanded institutions were excluded, should adopt

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(Mr. Prado Vallejo)

a fresh approach to, and show respect for, human rights. In that connection, the police and the armed forces should receive training in human rights; courses should also be given in schools and colleges. An efficient, independent and impartial judiciary was required, and greater efforts must be made to ensure total equality between men and women as there were still a number of restrictions which were impeding the attainment of that goal.

17. Mr. AGUILAR noted that, although the second periodic report had been prepared subsequent to the publication of the report of the Commission on the Truth, it made no mention of the Commission's recommendations. Moreover, the Amnesty Act, which also pre-dated the preparation of the periodic report, was incompatible with the provisions of the Covenant and served to conceal the truth about human rights violations committed during the years of conflict. Knowledge of the truth was the best way to bring about national reconciliation. The amnesty law granted impunity to those who had committed crimes against human dignity, and the failure to investigate and to establish the truth about those crimes was itself a violation of human rights. The claim that the legislators who had drafted the amnesty law were ignorant of the provisions of the Covenant was no excuse.

18. The agreement by the military to obey the civil authorities, although welcome, merely reflected compliance with those provisions of the Constitution which subordinated the military to civil authority.

19. The delegation had not provided answers to several of the questions put by the Committee. He hoped that those answers would be forthcoming in the third periodic report, and that, during the intervening period, the Government would take steps to redress the inequalities that existed between men and women in El Salvador.

20. On the subject of economic assistance from the international community, the Government of El Salvador seemed to employ a double standard. On the one hand, it expected the international community to be bound by its pledge to provide economic assistance while, on the other, the State refused to be bound by the recommendations of the international community. No one wished El Salvador to return to the dark days of the past; indeed, he personally was optimistic about the country's future. The new legislation that had been adopted was admirable and now needed to be implemented. He was confident that El Salvador had the human resources, the capacity and the will to do so effectively. While the report did not adequately reflect the undoubted improvement in the human rights situation in the country, the excellent oral presentations of the delegation had largely compensated for that deficiency.

21. Mr. HERNDL said that, in the 13 years since the Government of El Salvador had ratified the Covenant, the Committee had had only two opportunities to review the human rights situation in that country. Constant prodding by the international community seemed to be required in order to ensure the Government's compliance with its reporting obligations under article 40 of the Covenant. Indeed, the political and human rights situation in the country had occupied the attention of the relevant organs of the United Nations for the past several years. By signing the peace agreements in 1992, moreover, the

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(Mr. Herndl)

Government had undertaken further obligations to protect human rights which it must now honour.

22. One of the major obstacles in the way of the effective implementation of the peace agreements and other instruments was the disproportionate influence of the armed forces in Salvadorian society. One quarter of the national budget was currently allocated to the military, whose members often enjoyed impunity in respect of violations of human rights. It was the Government's task gradually to reduce the influence of that group in the affairs of the State.

23. Finally, he hoped that the Government would implement the many specific recommendations of the Commission on the Truth.

24. Mr. BRUNI CELLI commended the delegation on its efforts to fill the gaps in the report in their oral statements. The report placed great emphasis on the formal and legislative aspects of the protection of human rights in El Salvador but offered little insight into the reality of the human rights situation in the country. It was, in fact, a report of good intentions rather than concrete achievements, although he recognized that the period which it covered had been an exceptionally difficult one.

25. The Committee nevertheless welcomed the signing of the peace agreements in 1992, including the agreement providing for the disbanding and disarming of the two rival armies, as well as the legislative reforms which had been introduced to safeguard human rights more effectively, in particular, the establishment of the Office of the Procurator for the Protection of Human Rights. The reform of the electoral system would, moreover, go a long way towards the consolidation of democracy in El Salvador.

26. On the negative side, however, the Government had refused to be bound by its international commitments and had permitted the human rights violations committed over many years to go unpunished. Reforms of the penitentiary and judicial systems were urgently needed in order to protect human rights. In addition, the Government's failure to consult with relevant individuals and bodies in El Salvador in the preparation of the report was a matter of concern to the Committee. He hoped that there would be broader consultation, particularly with non-governmental organizations, when the third periodic report was prepared. He remained optimistic, however, because he was familiar with the country and its people and knew of their will to triumph over their recent past.

27. Mrs. EVATT said that the periodic report and the delegation's dialogue with the Committee had highlighted a number of positive changes in the human rights situation in El Salvador. She was particularly encouraged by the reforms in the electoral process, the introduction of a new Family Code, the creation of the Office of the Procurator for the Protection of Human Rights and the inclusion in the Constitution of provisions concerning the teaching of respect for human rights.

28. The major area of concern was the lack of confidence in the armed forces. In order to strengthen the still fragile democracy, it was extremely important to depoliticize the military and to implement the recommendations of the

(Mrs. Evatt)

Commission on the Truth. It was also important to investigate past human rights abuses and to ensure that the guilty parties answered for their crimes. The victims, moreover, should be compensated for their suffering and no amnesty law should extinguish that right to compensation.

29. The Office of the Procurator for the Protection of Human Rights had an important role to play in strengthening the democratic process and in ensuring that government was based on the freely expressed will of the people. Non-governmental organizations should also be allowed to participate more fully in the development of democratic institutions and in the preparation of future reports to the Committee.

30. Mr. WENNERGREN said that the periodic report and the accompanying core document (HRI/CORE/1/Add.34) had left the Committee with the impression that the legislation adopted and the institutions established to promote human rights and the rule of law in El Salvador had not yet yielded the results expected. While the 12-year civil strife was in no small measure responsible for that failure, it was now time to ensure the effective functioning of human rights institutions. The Commission on the Truth had accurately reported on the human rights violations committed during the period of civil strife and its recommendations should be implemented as far as possible. He noted that the Procurator for the Protection of Human Rights had reported on the continuation of human rights abuses for political motives. In his view, the very fact that such reports were being made was a sign of hope for the future. For its part, the judiciary, which had failed in previous years to discharge its responsibilities adequately, should be purged of its partisan members in order to ensure an independent judiciary free from political influence. Otherwise the rule of law could not be assured.

31. Mr. LALLAH said that the report placed too much emphasis on the formal aspects of the protection of human rights and shed little light on how the rights established in the Covenant were being effectively guaranteed. He regretted that, in preparing its report, the Government of El Salvador had failed to consult with non-governmental organizations in the country and to take cognizance of the report of the Commission on the Truth and the report of the Special Rapporteur appointed by the Commission on Human Rights.

32. A number of areas, particularly those referred to in sections II and III of the list of issues, had not been adequately covered. Serious violations of human rights had been alleged in precisely those areas. Despite the oral replies which the delegation had provided to supplement the information contained in the report, he still had certain questions concerning the death penalty. For its part, the amnesty law adopted in 1993 was incompatible with the Covenant, particularly articles 2 and 26 thereof, and its constitutionality should therefore be reviewed by the Government.

33. He was nevertheless encouraged by the signs of a gradual strengthening of the rule of law and he hoped that that process would continue and lead to full respect for human rights in El Salvador.

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34. Mrs. CHANET observed that, after periods of internal conflict many countries passed an amnesty law in response to a strong public consensus that it was the best means to reconciliation. That was not the case in El Salvador, where the national consensus had formed around the peace agreements and the establishment of the Commission on the Truth, and where the amnesty law, by thwarting any positive reforms undertaken and disregarding the Commission's recommendations, actually sowed the seeds of renewed conflict. In any case, it violated the Covenant, since it prevented the punishment of the guilty and redress for the victims, creating an impunity that ran counter to any genuine pursuit of human rights. The amnesty law must therefore be reconsidered and all the recommendations of the Commission on the Truth must be implemented. She hoped that the next report of El Salvador would be more comprehensive and that it would meet the Committee's expectations concerning democratic developments in the country.

35. Mr. FRANCIS remarked that, after years of conflict and human rights violations, it would have been a miracle if the report of El Salvador had been up to standard. On the positive side, there were developments such as the praiseworthy objectives being pursued by the new National Secretariat for the Family. In connection with the administration of justice, the report had also provided very instructive statistics on the commutation of sentences. It was a pity that it had not given similar statistics on cases of torture, unlawful use of force, or abuse of prisoners; the Committee had simply been told that such acts were all prohibited by law but it had not been given information on the application of the law. He expected, however, that the reports submitted by El Salvador would improve progressively.

36. Mr. POCAR underscored the quality of the dialogue with the delegation, especially as compared to the presentation of El Salvador's initial report five years earlier. Certain matters, however, required government attention. The amnesty law should be repealed, or at least revised to allow investigations of past crimes to go forward and victims to be compensated, and to prevent those guilty of violence from holding Government posts or participating in current police and judiciary activities.

37. El Salvador was clearly in a transitional period. A new Government had just been installed and the future of the country would depend on the force with which the ongoing reforms were pursued and the recommendations of the Commission on the Truth and the various human rights bodies were implemented. In addition to the suggested acceptance of regional monitoring of the human rights situation in the country, the Government might consider ratifying the Optional Protocol to the Covenant as a further impetus to the investigation of human rights violations.

38. Mr. SADI said that, while the report was rather too dry and abstract, the oral presentation by the Salvadorian delegation had been an admirable effort to shed more light on the political, judicial and social situation in the country. The dialogue with the Committee, excellent as it had been, would nevertheless be of no avail if the Committee's recommendations and views were disregarded, as had happened with the recommendations made by the Commission on the Truth a year earlier. In a time of difficult reconstruction, the emphasis must be placed on

(Mr. Sadi)

the essentials. He hoped that the Government would have the political will to act on both the Committee's and the Commission's recommendations.

39. Mr. DIMITRIJEVIĆ observed that reading a report from a State with such a recent history of tribulations which dealt only with the adequacy of legal provisions but remained silent on the de facto situation in the country, had given him an eerie sense of not being in the realm of reality. Only two paragraphs had been devoted to the right to life under article 6, which, at that, had been interpreted solely as referring to the death penalty and did not cover extrajudicial executions, actions by military squads and the like. Although the Commission on the Truth had criticized the behaviour of the judiciary in El Salvador, the report devoted only a short paragraph to article 14 of the Covenant, stating that all was well. That kind of report led the Committee to disregard it and base its comments on other sources of information. No one had expected the Government to ascribe guilt or to write a definitive history of the recent period, but the Committee had hoped for a frank exposition of the country's problems, including that of national reconciliation, which was made more acute by the uncooperative attitude of the military. It was in the interests of the State party to learn the truth regarding the origins of the recent upheaval and to remedy the causes of the human rights grievances that had contributed to the ugly nature of the political conflicts.

40. The CHAIRMAN, welcoming the great improvement in the dialogue with the representatives of El Salvador during the current session, said that the infrastructure of the society must be rebuilt during the transitional period in order to make human rights meaningful for all Salvadorians. Human rights would in fact provide a tool for the reconstruction of the country.

41. Mr. MELENDEZ (El Salvador) assured the Committee that its concerns were also those of El Salvador, and that any legislation that had been enacted in violation of the Covenant was the result not of an intentional disregard of the Covenant but of a lack of familiarity with it.

42. Noting that the United Nations had established a welcome system of economic cooperation and assistance to complement the peace process in El Salvador and the rest of Central America and had also set up a specific UNDP-supported reconstruction fund to help El Salvador to implement the Peace Agreement, he pointed out that the process had been delayed by the fact that the funds had not arrived on time or in the form stipulated.

43. Any recommendation of the Committee directed towards the betterment of the situation in his country would be taken very seriously by his Government. In its five years in power, the Cristiani Administration had endeavoured to maintain contacts with all sides of the political spectrum and with neighbouring countries in order to advance the peace process. He assured the Committee that the political will was there. The process would take time but he hoped that the next report would meet the expectations of the Committee and that all its concerns would be addressed.

44. Ms. VILLALTA (El Salvador) said that she would not fail to transmit all the Committee's recommendations to the Ministry of Foreign Affairs. The next report would show an improvement and be more in line with the Committee's wishes.

45. Mr. Meléndez and Ms. Villalta withdraw.

Draft general comment on article 27 of the Covenant (continued)
(CCPR/C/50/CRP.1/Rev.1)

46. Mr. LALLAH, introducing the revised draft general comment on article 27 of the Covenant (CCPR/C/50/CRP.1/Rev.1), said that it referred variously to the "right" or the "rights" protected under article 27; in all cases, the singular form should be used.

47. In the penultimate sentence of paragraph 5.2, the words "for example" should be added after the words "general rights" and the words "of assembly" should be added after the words "of association". In the penultimate sentence of paragraph 5.3, the word "distinct" should be replaced by the word "particular".

48. In paragraph 6.1, the word "legislative" should be added before "judicial or administrative" in the last sentence and minor editorial changes were required in the first sentence.

49. In paragraph 9, in which he had attempted to reconcile three different drafts, the first four sentences should be deleted and the fifth and sixth sentences, which would become the first and second sentences, should be revised to read "The Committee concludes that article 27 relates to a valuable right whose protection imposes specific obligations on States parties. The protection of this right ensures ...". The rest of the paragraph would remain unchanged.

50. Mr. HERNDL suggested that in the new second sentence of paragraph 9, the word "ensures" should be replaced by the phrase "is designed to ensure", since the protection of the rights conferred under article 27 was only one way to help to ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned.

51. Mr. POCAR said he felt that it might be better to refer in all cases to the "rights" rather than the "right" protected under article 27, since article 27 referred to distinct minorities in terms of different rights and there could be a minority which was not entitled to all those rights at the same time.

52. Paragraphs 3.2 and 7 were repetitive; the Committee should avoid being too insistent by referring twice to the question of the use of territory and its resources.

53. Mrs. EVATT said that it had been decided earlier that the words "in any other circumstances" should be added after the words "does not" in the last sentence of paragraph 5.3. That would make it clear that when a person did not speak the official language of the court, he would be able to use his own language through an interpreter, and that the right to interpretation was distinct from the right to use one's own language.

54. Mr. BRUNI CELLI said that while he agreed with the content of paragraph 6.2, he felt that the wording was very weak. There was a risk, if the second sentence was left as it stood, that a State party might take measures to protect the identity of some minorities in a way that was detrimental to other minorities. In placing an obligation on States parties, the last sentence of paragraph 9 did not accord with the spirit of article 27.

55. Mr. DIMITRIJEVIĆ said that he had difficulty with paragraph 3.2, not only because it was repetitive, but also because, while the first sentence dealt with the sovereignty and territorial integrity of a State party and paragraph 3.1 drew a distinction between the right of self-determination and the rights protected under article 27, the second sentence of paragraph 3.2 referred to territory and the right to the use of its resources. That could have undesirable implications. He felt that paragraph 3.2 should be deleted, or, alternatively, that only the first sentence should be retained.

56. Mr. BAN said that he supported the changes read out by Mr. Lallah, in particular, the deletion of the fourth sentence of paragraph 9 which could have given rise to various interpretations. He had some problems with the last sentence of paragraph 4 because he felt that the real problem was that States parties based the contention that they did not discriminate on the fact that they had no minorities.

57. Mrs. CHANET said that in paragraph 9, the Committee should not refer to a right as "valuable" since all rights were valuable and the use of that adjective only weakened the text.

58. She asked why paragraphs 6.2 to 9 of the draft comment were not included in the French text even though all the language versions had been issued on the same date.

59. Mr. POCAR said that the point raised by Mr. Bruni Celli was covered by the third sentence of paragraph 6.2, which indicated that positive measures taken by States must respect the provisions of articles 2, paragraph 1, and 26 of the Covenant.

60. Mr. EL-SHAFEI said that, in the second sentence of paragraph 3.2, the words "may consist" should be replaced by "may be reflected".

61. Paragraph 4 diluted the rights of the individual within a minority even though most of the Covenant was concerned with the rights of individuals within a community or minority. Moreover, the earlier sentences of paragraph 4 did not lead logically to the conclusion in the last sentence.

62. Mr. SADI said that he was surprised that the Committee was re-opening the debate on paragraph 3.2 and other paragraphs.

63. Mr. LALLAH said that Mr. El-Shafei had not correlated paragraph 4 with the preceding paragraph. He suggested that, in the new second sentence of paragraph 9, the word "ensures" should be replaced by the words "is directed towards ensuring". He could accept Mrs. Evatt's and Mrs. Chanet's suggestions, and also Mr. Pocar's suggestion about the use of "right" and "rights".

(Mr. Lallah)

Mr. Bruni Celli's point had been answered by Mr. Pocar. If paragraph 3.2 was deleted, the Committee would not be making the point it wished to make. As for Mr. Ban's point concerning paragraph 4, that paragraph was based on the Committee's experience with a number of States parties which claimed that they did not discriminate and which contended, on that basis alone, that they had no minorities.

64. The CHAIRMAN said that it seemed that the Committee could adopt the draft general comment, as revised.

65. Mr. NDIAYE, supported by Mrs. CHANET, said that the draft general comment could not be adopted until the full text was available in French.

66. The CHAIRMAN said that he took it that the Committee wished to adopt paragraphs 1 to 6.1 of the draft general comment. It would complete its consideration of the draft general comment when the rest of the French text was available.

67. It was so decided.

The meeting rose at 6.10 p.m.